

II. Remarks

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-39 are pending in the application. Claims 1, 18, 35, 36, 37, 38, and 39 are independent.

Applicant has amended independent Claims 1, 18 and 35-39 to clarify that the second active hydrogen-containing compound consists essentially of an anti-yellowing amount of an active hydrogen-containing phosphite compound. In addition, Applicant has made a minor amendment to Claim 18 and a minor amendment to Claim 36. It is believed that no new subject matter has been entered by the amendments submitted herein.

In the outstanding Official Action, the Examiner rejected Claim 36 under 35 U.S.C. §112 (second paragraph) as being purportedly indefinite. Applicants respectfully traverse this rejection on the ground that the person of ordinary skill in the art would not be confused as to the meaning or scope of the claims. Nevertheless, this claim has been amended for clarity with respect to the specification and Drawings, and not in response to any statutory requirement.

In the outstanding Official Action, the Examiner rejected Claims 1-39 under 35 U.S.C. §102(b) as being anticipated by United States patent 4,135,042 [Lickei et al. (Lickei)]. This rejection is traversed. Reconsideration is requested in light of the following remarks.

As stated in Paragraph [0017], the present inventors have surprisingly and unexpectedly discovered that incorporation of a specific subset of phosphite compounds in an otherwise general formulation for production of an isocyanate-based polymeric foam results in a foam having significantly anti-yellowing properties. The subset of phosphite compounds are those having at least one active hydrogen. The chemistry of such active hydrogen-containing phosphite compounds is discussed, for example, in Paragraphs [0038] through [0047]. The criticality associated with such a selection is illustrated, inter alia, in the Examples appearing in Paragraphs [0055] through [0070] (including Tables 1-7) of the present application. To clarify this feature of the present invention, Applicant has amended each of the independent claims of the present application to state that the second active hydrogen-containing compound consists essentially of an anti-yellowing amount of an active hydrogen-containing phosphite compound.

Lickei teaches the use of aliphatic phosphates generally as scorch inhibitors and polyurethane foams that contain halogenated phosphate polyester additives. Thus, the aliphatic phosphates taught by Lickei encompass a large number of phosphates that are specifically excluded in the claims of the present application. See, for example, the large list of phosphates set out in column 2 of Lickei – most of these are excluded by the claims

of the present application. Lickei simply fails to teach or suggest the use of active hydrogen-containing phosphite compounds as anti-yellowing additives in isocyanate-based polymer foams. Indeed, Example I of Lecki actually produces a yellow color.

The above ingredients were poured into a cardboard box where the foaming reaction took place. After curing, the resulting foam bun was sliced in half and the center portion of the foam was examined visually for discoloration. Only slight-to-moderate discoloration (dark yellow color) was noted. (Col. 7, lines 34-39; emphasis supplied).

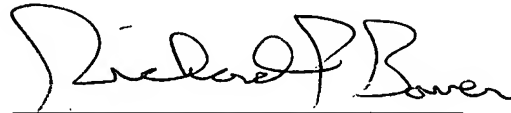
Accordingly, Applicant respectfully submits that the present invention, as defined by claims 1-39, distinguishes patentably over Lickei.

The Examiner is requested to reconsider and withdraw the rejection of claims 1-39 under 35 U.S.C. §102(b).

In view of the above amendments and remarks, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3507. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard P. Bauer", written over a horizontal line.

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